IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-665

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION,

Petitioner,

against

TRANSCONTINENTAL GAS PIPE LINE CORP.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

MEMORANDUM FOR INTERVENOR PUBLIC SERVICE ELECTRIC AND GAS COMPANY IN OPPOSITION

1. Petitioner seeks review of the Court of Appeals' Decision (Pet. App. 1a-19a) affirming the Decisions of the District Court (Pet. App. 22a-35a). The decisions below are correct and are not in conflict with any decision of this Court or any other Court of Appeals.

2. Public Service Electric and Gas Company (Public Service) is a public utility operating company engaged among other things in the purchase, manufacture and distribution of gas. It purchases natural gas from three interstate transmission pipeline companies and serves gas to over 1,270,000 customers in an area having a population in excess of 4,900,000 persons and which extends from the Hudson River opposite New York City to the Delaware River at Trenton and thence to Camden, New Jersey. Transcontinental Gas Pipe Line Corporation (Transcontinental) is a major supplier of Public Service. The record clearly established that Public Service has a critical and urgent need for this gas for its customers. Transcontinental is also presently curtailing gas supplies and is unable to meet its existing contractual commitments. The Court of Appeals took note of the needs of the New York, New Jersey metropolitan area and the fact that Transcontinental was trying to meet those needs by construction of a container for additional storage of liquefied natural gas and appurtenant facilities (Pet. App. 11a).

3. The record also reveals that Petitioner had not promulgated any set of regulations, standards, or criteria applicable to Transcontinental's type of facility (Pet. App. 11a). At the same time, Petitioner will allow a 750 acre sports complex consisting of two stadiums, a race track and various adjacent parking facilities (Pet. App. 10a). Petitioner seems to be looking for an advisory opinion but goes to great length to avoid mentioning exactly what the Court of Appeals decision says. In fact there is nothing in this case to justify an assertion that an important and novel question of federal law has to be settled. Further protracting this case will not set standards or pat-

terms in any other case. This case stands by itself. The Court of Appeals recognized the nub of this issue when it stated (Pet. App. 8a):

> "• • • We must therefore look to the particular facts presented by this case to determine whether the Commission's complete interdiction[14] of the proposed facility was a reasonable exercise of its police powers, or as the District Court determined, an 'arbitrary, unreasonable and unjustifiable interference' with interstate commerce."

The Court of Appeals treated with all of Petitioner's allegations and found them unsupported and unsubstantiated in the light of firmly established constitutional principles.

4. There is absolutely no conflict with *Calvert Cliffs Coordinating Committee, Inc. et al.* v. *Atomic Energy Commission*, 449 F. 2d 1109 (D. C. Cir. 1971). The Court of Appeals reached a completely fair and rational decision in this case and did not ignore the National Environmental Policy Act of 1969 (Act). Pertinent portions of the Act were discussed and analyzed by the Court of Appeals. (See Pet. App. 17a-18a).

5. In addition to the reasons advanced herein for denying certiorari, Public Service adopts all of the arguments which Transcontinental urges in its brief in support of the same result.

"[14] It is important to emphasize that the Commission is not attempting to require the Transco facility to conform to any specific regulation. Rather it is attempting to prohibit construction altogether."

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

EDWARD S. KIRBY
JAMES R. LACEY
Attorneys for Public Service Electric and Gas Company

November 27, 1972